

NCAA DIVISION III INFRACTIONS APPEALS COMMITTEE

INTERNAL OPERATING PROCEDURES (IOPs)



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Web Location, Click [HERE](#)

Introduction and Purpose

Internal Operating Procedures (IOPs) have been created to aid NCAA Division III institutions and individuals in understanding the infractions appeals process and procedures. These IOPs have been approved by the NCAA Division III Management Council and developed by NCAA member institutions through adopted legislation and by the NCAA Division III Infractions Appeals Committee. IOPs may be amended from time to time, without prior notice, to accommodate changes to the constitution, the bylaws and the Infractions Appeals Committee's practices. An amendment is immediately effective. Any amendments will be presented to the Management Council for approval. Editorial, formatting or typographical corrections that do not rise to the level of an amendment will be made as needed.

Questions regarding situations in the appeals process not specifically addressed by these IOPs should be submitted as outlined in Section 14 of IOPs.

These IOPs will accompany the NCAA Division III Committee on Infractions decision informing the institution/involved individual of its right to appeal and the exact deadline for the submission of its Notice of Intent to Appeal to the Infractions Appeals Committee.

An appeal is not a new hearing that provides a second chance to argue the case. The Infractions Appeals Committee will affirm, vacate or remand decisions of the Committee on Infractions involving major infractions violations, only if the institution/involved individuals can show one or more of the following grounds:

- a. A conclusion is clearly contrary to the information presented to the committee;
- b. The facts found by the Committee on Infractions do not constitute a violation of the Association's legislation;
- c. There was a procedural error and but for the error, the Committee on Infractions would not have made the conclusion of a violation; or
- d. In prescribing a penalty that is excessive such that it constitutes an abuse of discretion.

The Infractions Appeals Committee acts on the basis of the record in the case. It will not consider information that was not presented to the Committee on Infractions, except in limited circumstances.

All previous Infractions Appeals Committee decisions may be found on the Legislative Services Database for the Internet (LSDBi) at <https://web3.ncaa.org/lsdbi/>. Institutions and individuals are encouraged to review these decisions and to use those involving similar violations and issues on appeal as guides when presenting an appeal.

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1 INFRACTIONS APPEALS COMMITTEE

1-1 Composition

The Infractions Appeals Committee shall consist of five members. One member shall be a member of the Presidents Council and shall serve as chair. One member shall be a member of the Management Council. One member shall be from the general public who shall not be associated with a collegiate institution, conference, or professional or similar organization, or represent coaches or athletes in any capacity. Two positions shall be from the membership.

For the current composition of the Infractions Appeals Committee, visit its webpage by clicking [HERE](#).

1-2 Authority

The Infractions Appeals Committee shall hear and act on an institution's or involved individual's appeal of the findings and/or penalties of major violations by the Committee on Infractions. The committee may establish or amend enforcement policies and procedures set forth in NCAA Bylaw 32 that relate directly to the infractions appeals process, subject to review and approval by the Management Council.

1-3 Term of Members

A member shall serve a three-year term, which shall commence on the first day of September after the member's election. A member may be reappointed but shall not serve more than six years. The terms of the members who are serving as the representatives of the Presidents Council or Management Council shall coincide with their terms on those bodies. When possible, terms shall be staggered to ensure that vacancies occur in proper sequence.

1-4 Duties of Chair

- a. Coordinate with the Infractions Appeals Committees Office:
 - (1) Logistics, administrative and other support related to the processing of infractions appeals cases;
 - (2) Scheduling committee meetings, conference calls and scheduling oral arguments; and
 - (3) Scheduling release of infractions appeals decisions.

- b. Assign a committee member to serve as primary committee member for decision drafting; and present Infractions Appeals Committee's reports (in person and written) to the Management Council.
- c. Consider and decide case-related requests (e.g., time extension, oral argument attendance) in consultation with the full committee.
- d. Preside over in-person oral arguments and deliberations related to infractions appeals cases.
- e. Review and approve the final version of press release and decision of infractions appeals cases.
- f. Serve as the primary spokesperson for the Infractions Appeals Committee.

1-5 Duties of Vice Chair

- a. Serve as a resource for the chair.
- b. Fulfill the duties of the chair, when the chair is unavailable to conduct duties.

1-6 Conflict of Interest

No member of the Infractions Appeals Committee shall participate in a case if he or she is directly connected with an institution under investigation or if he or she has a personal, professional or institutional affiliation that may create the appearance of partiality.

A committee member shall not participate in the committee's discussion or vote on any action that might bring direct or indirect financial benefit to the member or any organization in which the member is financially interested (other than the member's institution or the conference of which it is a member). A violation of this rule by a member of a committee shall not invalidate the action taken by the committee if, following disclosure of the conflict of interest, the committee authorizes, ratifies or approves the action by a vote sufficient for the purpose, without counting the vote of the committee member with the conflict of interest, and the Management Council approves such action. All committee members shall agree

to this policy before committee service and shall abide by the policy at all times. The current conflict of interest policy is located on the NCAA website (www.ncaa.org) or may be obtained from the NCAA national office.

1-7 Recusals and Objections

It is the responsibility of the committee member to recuse himself or herself if a conflict exists. Objections to the participation of a committee member in a particular case should be raised, in writing through case management system, as soon as recognized, but will not be considered unless raised at least one week in advance of the committee's review of the case.

1-8 Temporary Substitution

If it appears that one or more of the committee members will be unable to participate in the disposition of a case, the chair may designate a former member or members of the committee to rejoin the committee for purposes of consideration and disposition of that case.

2 CONFIDENTIALITY

2-1 Enforcement Staff, Committee on Infractions and Infractions Appeals Committee

Except as provided in Bylaws 19 and 32, the Committee on Infractions, the Infractions Appeals Committee and the enforcement staff shall not make public disclosures about a pending case until the case has been announced in accordance with prescribed procedures.

2-2 Institutions and Individuals

An institution and any individual subject to the NCAA constitution and bylaws involved in a case, including any representative or counsel, shall not make public disclosures about the case until a final decision has been announced in accordance with prescribed procedures.

3 THE RIGHT TO APPEAL

3-1 Standing

3-1-1 Who may appeal

An institution or an individual who has been found by the Committee on Infractions to have been involved in a violation of NCAA constitution or bylaws may appeal to the Infractions Appeals Committee. An individual may appeal regardless of whether the institution does so, and vice-versa. The appeals are independent of each other.

The Infractions Appeals Committee will not hear an in-person oral argument by an individual who has not appeared (either in person or through written presentation) before the Committee on Infractions' hearing.

3-1-2 What may be appealed

An institution/individual may accept the findings, facts or conclusions and still appeal the penalty, and may appeal one element of the penalty while accepting others.

3-2 Standard of Review

Determinations of fact and conclusions found by the Committee on Infractions shall not be set aside on appeal, except after a showing that:

- a. A factual finding is clearly contrary to the information presented to the Committee on Infractions;
- b. The facts found by the Committee on Infractions do not constitute a violation of the Association's rules;
- c. There was a procedural error and but for the error, the Committee on Infractions would not have made the finding of violation; or
- d. In prescribing a penalty that is excessive such that it constitutes an abuse of discretion.

3-3 Methods of Appeal

The appeal may be heard through either in-person oral argument or review of written record.¹ An institution or involved individual may not request an in-person oral argument before the Infractions Appeals Committee unless the institution or involved individual has made an in-person appearance before the Committee on Infractions.

4 THE APPEAL

4-1 Record on Appeal

4-1-1 Content

The Infractions Appeals Committee will consider only the record on appeal, which shall consist of:

- a. The case record before the Committee on Infractions;
- b. The official transcript of the Committee on Infractions' hearing(s);
- c. The decision of the Committee on Infractions;
- d. The institution/individual's Notice of Intent to Appeal and written appeal;
- e. The Committee on Infractions response to the written appeal;
- f. The institution/individual's rebuttal, if any;
- g. The enforcement staff's submittal, if any; and
- h. The appellant's response to the enforcement staff's submittal, if any.

¹ The Infractions Appeals Committee will consider hearing an oral argument via videoconference in extenuating circumstances.

The Infractions Appeals Committee may consider requests to supplement the record with additional material.

It is permissible for an institution/individual or the Committee on Infractions to provide, as part of its appeal submissions, brief portions of materials submitted to the Committee on Infractions in conjunction with the hearing before that body. In appeals in which a summary disposition report is referenced, only relevant portions of the report should be attached to the appeal submission.

4-1-2 Consideration of Information

The Infractions Appeals Committee shall consider only the information contained in the record(s) of proceedings before the Committee on Infractions and the record on appeal.

If an institution or involved individual seeks to introduce information during the appeals process that was not presented to the Committee on Infractions for its consideration, the Infractions Appeals Committee will determine whether the information constitutes new information.

4-1-3 New Information

4-1-3-1 Definition of New Information

New information is relevant, material information that could not have reasonably been ascertained prior to the Committee on Infractions hearing.

4-1-3-2 Handling New Information

If the Infractions Appeals Committee determines that the information is new information, the Infractions Appeals Committee, after input from a Committee on Infractions' designee, shall determine whether the "new information" could have materially affected any decision made by the Committee on Infractions, and if so, the case shall be referred back to the Committee on Infractions for its review.

If the information does not meet the definition of "new information" or if the "new information" would not have materially affected a decision made by the Committee on Infractions, the information shall not be included in the record on appeal and shall not be considered by the Infractions Appeals Committee.

The Infractions Appeals Committee will provide written notice to all parties regarding its determination.

4-2 Access to the Record on Appeal

After submission of a timely Notice of Intent to Appeal, the institution/individual will provide access to some portions of the record through a secured website. That portion includes recorded interviews, interview summaries and/or interview transcripts, and other factual information pertinent to the case. The institution and involved individuals may also review such information in person at the NCAA national office.

For the record on appeal, those portions that may only be reviewed through the custodial arrangement include:

- a. A copy of the official transcript of the Committee on Infractions' hearing;
- b. The Committee on Infractions' decision;
- c. The Committee on Infractions' response to the written appeal;
- d. The enforcement staff submittal; and
- e. Any additional materials which the Infractions Appeals Committee has authorized to become part of the record of appeal.

These materials may only be reviewed by the individual and authorized representatives of the institution/individual (including legal counsel). Duplication of material is prohibited. Those reviewing the material may take handwritten notes or may use a mechanical recording device to make verbal notes, provided no verbatim records of the reviewed information are made.

4-3 Access to Appeal Submissions by Other Parties

4-3-1 Appeal by the individual

If the Committee on Infractions decision involves an individual as well as an institution and the individual appeals to the Infractions Appeals Committee, the institution is not entitled, in every case, to receive a copy of the individual appellant's written appeal or rebuttal to the Committee on Infractions response. The institution may request a copy from the individual appellant. If this request is denied, the institution may request a copy from the Infractions Appeals Committee. The Infractions Appeals Committee will make a copy available in extraordinary circumstances.

4-3-2 Appeal by the institution

If the Committee on Infractions decision involves an individual as well as an institution and the institution appeals to the Infractions Appeals Committee, the individual is not entitled, in every case, to receive a copy of the institution's written appeal or rebuttal to the Committee on Infractions response. The individual may request a copy from the institution. If this request is denied, the individual may request a copy from the Infractions Appeals Committee. The Infractions Appeals Committee will make a copy available in extraordinary circumstances.

4-4 Stay of Appealed Penalties

If a Notice of Intent to Appeal is filed within the deadline, unless ordered otherwise by the Infractions Appeals Committee, any penalties prescribed by a hearing panel of the Committee on Infractions that have been appealed shall be stayed during the pendency of the appeal. This stay is automatic.

5 WRITTEN SUBMISSIONS

5-1 Submission of Written Material

Deadlines for the submission of written documents within the infractions appeals process, except for the Notice of Intent to Appeal, shall be considered met if the written document is submitted electronically to the Infractions Appeals Committees staff not later than 5 p.m. Eastern time on the due date.² Electronic submission to the staff shall be completed through a method designated by the Infractions Appeals Committee.

Immediately after electronic submission, hard copies of the written documents shall be provided directly from the filing party to all members of the Infractions Appeals Committee.

5-2 Notice of Intent to Appeal

A communication explaining how to initiate an appeal and a copy of these internal operating procedures will accompany the Committee on Infractions decision informing the institution and individuals(s) of the right to appeal as well as deadline for and instructions on how to submit the Notice of Intent to Appeal form to the Infractions Appeals Committee.

5-2-1 Content

- a. The institution/individual must submit the Notice of Intent to Appeal on the form provided by the Committee on Infractions.
- b. The institution/individual must identify on the form the specific factual findings, conclusions, violations and/or penalties being appealed to the Infractions Appeals Committee. The institution/individual must indicate the basis for appealing each factual finding, conclusion, violation and/or penalty.
- c. The institution/individuals must indicate on the form whether the institution/individual will submit its appeal

² If a due date for a submission process falls on a weekend or federal holiday, the due date will be moved to the next calendar day that is not a weekend or federal holiday.

only in writing or will also appear in person at the oral argument before the Infractions Appeals Committee.

- d. If an institution/individual appeals only factual findings and/or conclusions that violations occurred, the penalties are not stayed and remain in full effect during the appeals process. If the institution/individual appeals one or more of the penalties prescribed, only the specific penalties appealed are stayed pending the public announcement of the Infractions Appeals Committee's decision. (See section 4.4)
- e. If an institution/individual appeals only specific penalties prescribed by the Committee on Infractions, the Infractions Appeals Committee will confine its decision to the specific penalty (or penalties) appealed, but will consider all of the penalties prescribed when making this decision.
- f. In the case of an individual appellant, the Notice of Intent to Appeal must state whether that individual is currently employed at an NCAA institution (regardless of the division of the institution). Further, if the individual's employment changes during the course of the appeal process (that is, from the time of the submission of the Notice of Intent to Appeal through the release of final Infractions Appeals Committee decision), the individual must notify the Infractions Appeals Committee, through the Infractions Appeals Committees Office staff, of that change, including the identity of the new employer.

5-2-2 Deadline for Submission

The Notice of Intent to Appeal form of an institution/individual must be received by the Infractions Appeals Committees Office not later than 15-calendar days from the date of the public release of the Committee on Infractions decision.

6 WRITTEN APPEAL

The Infractions Appeals Committee will acknowledge receipt of a timely Notice of Intent to Appeal in writing and provide information about the submission of written appeal.

6-1 Content

The institution/individual must submit its written appeal, which includes the arguments in support of its appeal, in order to perfect its appeal to the Infractions Appeals Committee.

6-2 Deadline for Submission

The institution/individual has 30-calendar days from the date of the Notice of Intent to Appeal acknowledgement to file a written appeal with the Infractions Appeals Committee.

6-3 Failure to Submit Written Appeal

Failure to submit a written appeal will result in dismissal of the appeal.

7 COMMITTEE ON INFRACTIONS RESPONSE TO THE WRITTEN APPEAL

The Infractions Appeals Committee will acknowledge receipt of a timely Committee on Infractions response in writing. The Committee on Infractions' appeal advocate must file a response to the written appeal.

7-1 Content

This response shall include a statement of the issue(s) raised in the appeal and the Committee on Infractions' response to the issue(s) raised in appeal.

7-2 Deadline for Submission

The Committee on Infractions' appeal advocate has 30-calendar days from the date of the written appeal acknowledgement to file a Committee on Infractions response with the Infractions Appeals Committee.

8 REBUTTAL TO THE COMMITTEE ON INFRACTIONS RESPONSE

The Infractions Appeals Committee will acknowledge receipt of a timely Committee on Infractions response in writing. The institution/individual may submit a rebuttal to the Committee on Infractions response.

8-1 Content

The rebuttal may only address issues contained in the initial submission or the Committee on Infractions response.

8-2 Deadline for Submission

The institution/individual will have 14-calendar days, from the acknowledgement of the Committee on Infractions response, to submit a rebuttal.

9 ENFORCEMENT STAFF SUBMITTAL

The enforcement staff may submit written information regarding perceived new information, errors, misstatements and/or omissions relating to the appellant's initial submission, Committee on Infractions response and/or rebuttal documents.

9-1 Content

The enforcement staff statement shall be limited to a direct and specific identification of the new information, errors, misstatements and/or omissions, and shall contain no argument. In addition, the identification shall include the specific page(s) at which the new information, errors, misstatements, and/or omissions appear and where in the record the information which the enforcement staff believes is correct or accurate appears.

9-2 Deadline of Submission

This enforcement staff statement will have 10-calendar days, from the acknowledgement of whether a rebuttal to the Committee on Infractions response was filed, to submit the enforcement staff submittal.

10 RESPONSE TO THE ENFORCEMENT STAFF SUBMITTAL

The Infractions Appeals Committee will acknowledge receipt of a timely enforcement staff submittal in writing. Institution/individual shall be permitted to provide a response to the enforcement staff submittal.

10-1 Content

The response to the enforcement staff submittal shall be limited solely to an identification of record information, if any, which supports the accuracy of the alleged error, misstatement, or omission identified by the enforcement staff. The appellant's submittal shall include no argument beyond such direct and limited identification.

10-2 Deadline for Submission

The institution/individual will have 10-calendar days, from the acknowledgement of an enforcement staff submittal, to submit the response to enforcement staff submittal.

11 DETERMINATION OF ACCURACY OF CHALLENGED INFORMATION

The Infractions Appeals Committee will review enforcement submittal and response to enforcement submittal and then, notify, in writing, all parties of its determination of the accuracy of the challenged information.

12 ORAL ARGUMENT

12-1 Oral Argument Format

The institution/individual shall be permitted a reasonable time to make an oral presentation to supplement its written appeal. The Committee on Infractions appeal advocate shall then be permitted a reasonable time to orally present the Committee on Infractions response. The period of time for the presentation by the institution/individual and the committee appeal advocate shall be left to the discretion of the chair of the Infractions Appeals Committee.

12-2 Oral Argument Attendance

12-2-1 Infractions Appeals Committee

A minimum of three Infractions Appeals Committee members must be present to consider an appeal. (See also sections 1.1 and 1.7)

12-2-2 Appellant

12-2-2-1 Institution

The chancellor/president and director of athletics of an appealing institution are required to attend the oral argument. Faculty athletics representatives may attend, but are not required. Other university representatives whom the institution deems appropriate or a conference representative may attend the oral argument.

12-2-2-2 Individual

The individual who has requested an in-person oral argument is required to attend the oral argument. Also, the individual's representative(s) may attend the oral argument.

12-2-2-3 Failure of Appellant to Appear

If the appellant fails to appear at the oral argument, the Infractions Appeals Committee will dismiss the appeal and the Committee on Infractions decision, including factual findings, conclusions, violations and/or penalties, will stand.

12-2-3 Committee on Infractions

The Committee on Infractions will be represented by its committee appeal advocate and the NCAA managing director for the Office of Committees on Infractions or his/her designee.

12-2-4 Enforcement Staff

The vice president for enforcement and two NCAA enforcement staff members familiar with the case may attend the oral argument.

12-2-4-1 Participation in the Oral Argument by the Enforcement Staff

The enforcement staff may identify new information, error, misstatement or omission only if such allegedly offending material is raised for the first time during the oral argument. If the new information, error, misstatement, or omission is contained in the parties' written submissions and is identified by the enforcement staff in the enforcement's written submittal, then the enforcement staff may not correct again if the information is repeated during the oral argument. Further, if the new information, error, misstatement, or omission is contained in the parties' written submissions and is not identified by the enforcement staff in the enforcement staff's written submittal, then the enforcement staff may not identify such material for the first time during the oral argument.

This presentation may occur upon oral request by the enforcement staff at the conclusion of the oral argument period during which the enforcement staff believes that the offending material was presented.

The presentation by the enforcement staff in an Infractions Appeals oral argument shall not be accepted during either party's presentation, but instead must be made, if at all, at the conclusion of the presentation during which the information to which the enforcement staff wishes to respond is presented.

12-2-5 Silent Observers

Two representatives of nonappealing party may attend the oral argument as a silent observer.

13 POST-ORAL ARGUMENT

- a. The Infractions Appeals Committee shall act on an appeal by majority vote of the members present and voting.
- b. The decision of the Infractions Appeals Committee is final and shall not be subject to further review by any other authority.
- c. The Infractions Appeals Committee's final written decision shall be sent to the appellant institution/individual and all other appropriate parties involved one-calendar day prior to the public release.
- d. The Infractions Appeals Committee will announce its final decision publicly in coordination with the NCAA's public and media relations staff.

14 QUESTIONS AND REQUESTS

14-1 Infractions Appeals Committees Office

The Infractions Appeals Committees Office staff is available to assist all of those involved in the infractions appeals process. If you have questions about the infractions appeals process, please feel free to contact the staff at the NCAA national office via telephone (317-917-6222), email or case discussion posting (for an open appeal case).

The staff includes:

- a. Wendy A. Walters, managing director for Infractions Appeals Committees.
- b. Alexander Smith, director for Infractions Appeals Committees.
- c. Kelley Sullivan, assistant coordinator for Infractions Appeals Committees.

14-2 Submit Request to the Committee – for Open Appeal Cases

All requests (e.g., extension, additional oral argument attendees, etc.) to the Infractions Appeals Committee must be submitted via the case management system (CMS). See the NCAA Wiki on CMS for detail instructions on submitting requests.